## Subject Index


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 2 |
| Questions presented | 2 |
| One | 2 |
| Two | 2 |
| Constitutional provisions and statutes involved | 3 |
| Statement of facts | 5 |
| Reasons for granting the petition as to question one | 8 |
| Did the Superior Court deny petitioner his right to trial by jury in violation of the Sixth Amendment to the United States Constitution made applicable to the States through the Fourteenth Amendment? | 8 |
| Argument | 8 |
| As to question two | 11 |
| Do California Penal Code Sections 11225, 11226, 11227, 11228 and 11229, as interpreted by the California courts, and as applied to petitioner, constitute a statutory scheme for the prior restraint of material presumptively protected by First Amendment? | 11 |
| Argument | 11 |
| Conclusion | 13 |


## Table of Authorities Cited


| Cases | Pages |
|---|---|
| Baldwin v. New York, 399 U.S. 66, 26 L.Ed.2d 437, 90 S.Ct. 1886 (1970) | 8, 10 |
| Burstyn v. Wilson, 343 U.S. 495, 96 L.Ed. 1098, 72 S.Ct. 777 (1952) | 12 |
| Chambers v. District of Columbia, 90 U.S.App. D.C. 153, 194 F.2d 336 (D.C. Cir. 1952) (right to counsel) | 10 |
| Cheff v. Schnackenburg, 384 U.S. 373, 16 L.Ed.2d 629, 86 S.Ct. 1523 (1966) | 8 |
| Duncan v. Louisiana, 391 U.S. 145, 20 L.Ed.2d 491, 88 S.Ct. 1444 (1968) | 9, 10 |

Pages

Frank v. United States, 395 U.S. 147, 23 L.Ed.2d 162, 89 S.Ct. 1503 (1969) ..... 9

Freedman v. Maryland, 380 U.S. 51, 13 L.Ed.2d 649, 85 S.Ct. 734 (1965) ..... 12

James v. Headley, 410 F.2d 325 (5 Cir. 1969) ..... 10

Memoirs v. Massachusetts, 383 U.S. 413, 16 L.Ed.2d 1, 86 S.Ct. 975 (1966) ..... 12

Near v. Minnesota, 283 U.S. 697, 75 L.Ed. 1357, 51 S.Ct. 625 (1931) ..... 12

People v. Loeber (1958) 158 Cal.App.2d 730, 323 P.2d 136, appeal dismissed 358 U.S. 139, 3 L.Ed.2d 226, 79 S.Ct. 242 ..... 8

Roth v. United States, 354 U.S. 476, 1 L.Ed.2d 1498, 77 S.Ct. 1304 .....11, 12

State v. Koscot Interplanetary Inc. (1972) 330 N.Y.S.2d 492 ..... 10

State v. Owens (1969) 54 N.J. 153, 254 A.2d 97 ..... 10

United States v. R. L. Polk & Co., 438 F.2d 377 (6 Cir. 1971) ..... 9, 10

Williams v. Florida, 399 U.S. 78, 26 L.Ed.2d 446, 90 S.Ct. 1893 (1970) ..... 9

## Codes

California Penal Code:

Section 669 ..... 8

Section 11225 .....2, 3, 5, 11, 12

Section 11226 .....2, 3, 11

Section 11227 .....2, 4, 5, 11

Section 11228 .....2, 4, 11

Section 11229 .....2, 5, 9, 11

## Constitutions

United States Constitution:

First Amendment ..... 3, 12

Sixth Amendment .....2, 3, 9, 11

Fourteenth Amendment .....2, 3, 9

## Statutes

28 U.S.C., Section 1257(3) ..... 2

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1972

No.

PHILIP JOSEPH MAITA, *Petitioner,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
*Respondent.*

THE PEOPLE OF THE STATE OF CALIFORNIA,
*Real Party in Interest.*

## PETITION FOR WRIT OF CERTIORARI
**to the Superior Court of the State of California, in and for the County of San Mateo**

Petitioner Philip Joseph Maita prays that a writ of certiorari issue to review the judgment of the Superior Court of the State of California in and for the County of San Mateo.

### OPINION BELOW

The Judgment and Order of the Superior Court (People v. Maita and Vennemeyer, No. 149826) is set forth in Appendix A.

The order of the Court of Appeal denying the Petition for Writ of Habeas Corpus/Certiorari is set forth in Appendix B.

The order of the California Supreme Court denying Petition for Hearing of Habeas Corpus/Certiorari is set forth in Appendix C.

---

## JURISDICTION

The order of the California Supreme Court denying petitioner's Petition for Hearing was entered June 15, 1972.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1257(3).

---

## QUESTIONS PRESENTED

### ONE

Did the Superior Court deny petitioner his right to trial by jury in violation of the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment?

---

### TWO

Do California Penal Code Sections 11225, 11226, 11227, 11228 and 11229, as interpreted by the California courts, and as applied to petitioner, constitute a statutory scheme for the prior restraint of material presumptively protected by the First Amendment?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First, Sixth and Fourteenth Amendments to the Constitution of the United States, as follows:

First Amendment: "Congress shall make no law . . . abridging the freedom of speech. . ."

Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . ."

Fourteenth Amendment: "Nor shall any state deprive any person of life, liberty or property without due process of law. . ."

California Penal Code Sections 11225 et seq., as follows:

§ 11225. Every building or place used for the purpose of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, and every building or place in or upon which acts of illegal gambling as defined by state law or local ordinance, lewdness, assignation or prostitution, are held or occur, is a nuisance which shall be enjoined, abated and prevented, whether it is a public or private nuisance.

Nothing in this section shall be construed to apply the definition of a nuisance to a private residence where illegal gambling is conducted on an intermittent basis and without the purpose of producing profit for the owner or occupier of the premises.

§ 11226. Whenever there is reason to believe that a nuisance as defined in this article is kept, maintained or is in existence in any county, the

district attorney, in the name of the people of the State of California, must, or any citizen of the State resident within said county, in his own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

§ 11227. Whenever the existence of a nuisance is shown in an action brought under this article to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance.

§ 11228. Actions brought under this article have precedence over all actions, excepting criminal proceedings, election contests and hearings on injunctions, and in such actions evidence of the general reputation of a place is admissible for the purpose of proving the existence of a nuisance. If the complaint is filed by a citizen, it shall not be dismissed by the plaintiff or for want of prosecution except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such action with reasonable diligence, may substitute any other citizen consenting thereto for the plaintiff. If the action is brought by a citizen and the court finds there was no reasonable ground or cause therefor, the costs shall be taxed against such citizen.

§ 11229. Any violation or disobedience of an injunction or order expressly provided for by this article is punishable as a contempt of court by a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000), by imprisonment in the county jail for not less than one nor more than six months, or by both.

---

## STATEMENTS OF FACTS

Petitioner Philip Joseph Maita has for the past eight years owned a bar in San Mateo, California. In addition to alcoholic beverages, the "Easy Street," as the premises are called, offers entertainment to its patrons.

On December 11, 1969, the District Attorney of San Mateo County filed a civil complaint against petitioner and the owner of the building in which the Easy Street is located. The complaint alleged, pursuant to Section 11225 of the California Penal Code, that the entertainment presented on the premises constituted a public nuisance. The complaint prayed for injunctive relief to abate the nuisance.

Pursuant to California Penal Code Section 11227, the San Mateo County Superior Court on January 27, 1970, issued its temporary injunction enjoining petitioner from presenting certain types of films and other entertainment to adult patrons on his premises. Petitioner sought relief from this injunction through the California courts without success.

On September 14, 1971, the temporary injunction was modified pursuant to stipulation between petitioner and the San Mateo County District Attorney. The injunction as modified continued to enjoin certain types of films and other entertainment.

On February 2, 1972, petitioner was served with an order to show cause charging him with four counts of contempt of court for violating the preliminary injunction of January 27, 1970, as modified September 14, 1971. The order to show cause charged that on each of four dates in January of 1972, petitioner exhibited sexually explicit films and permitted nude cocktail waitresses on his premises, all in violation of the injunction.

Each of the four counts of contempt of court with which petitioner was charged carried a maximum penalty of six months in the county jail and/or a $1,000 fine.

Petitioner appeared in San Mateo County Superior Court on February 17, 1972. He requested a trial by jury; this request was denied. Petitioner also moved to quash the order to show cause, upon the ground that the temporary injunction of January 27, 1970, as modified September 14, 1971, was a prior restraint on matter presumptively protected by the First Amendment. This motion was denied.

Thereafter the Superior Court took testimony from the People and from petitioner. The District Attorney offered no proof that the films which constituted one of the bases of the contempt citation were obscene.

On March 3, 1972, the Superior Court held petitioner in contempt of court on each of the four counts charged. Petitioner was sentenced to six months in the county jail on Count One, with four of the six months suspended. He was sentenced to sixty days in the county jail on each of the other three counts, with these sentences to be served concurrent to the sentence imposed on Count One. Petitioner was also ordered to pay a fine of $1,000 on Count One, and $500 on each of Counts Two, Three and Four, for a total of $2,500.

Since a judgment of contempt is not appealable under California law, petitioner sought relief on habeas corpus and certiorari from the Court of Appeal. This was denied on May 19, 1972. The California Supreme Court denied a hearing on June 15, 1972.

Thereafter on June 26, 1972, the Honorable William O. Douglas, Associate Justice of the United States Supreme Court, issued an order staying the judgment of the San Mateo County Superior Court pending the filing and adjudication of a petition for writ of certiorari in the United States Supreme Court (No. A-1324).

## REASONS FOR GRANTING THE PETITION AS TO QUESTION ONE

**DID THE SUPERIOR COURT DENY PETITIONER HIS RIGHT TO TRIAL BY JURY IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION MADE APPLICABLE TO THE STATES THROUGH THE FOURTEENTH AMENDMENT?**

### ARGUMENT

The trial court denied petitioner's request for trial by jury upon the ground that petitioner was charged with a petty offense under *Cheff v. Schnackenburg,* 384 U.S. 373, 16 L.Ed.2d 629, 86 S.Ct. 1523 (1966) and therefore was not entitled to trial by jury. (See Appendix D).

In *Baldwin v. New York,* 399 U.S. 66, 69, 26 L.Ed. 2d 437, 90 S.Ct. 1886 (1970), this Court concluded that "no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized." Petitioner was charged with four separate counts of contempt, *each* of which carried a possible penalty of imprisonment for six months and a $1,000 fine.

Under California law, the Superior Court had the right in its discretion to order that sentences on each count be made to run consecutively. *California Penal Code* Section 669; *People v. Loeber* (1958), 158 Cal. App.2d 730, 323 P.2d 136, appeal dismissed 358 U.S. 139, 3 L.Ed.2d 226, 79 S.Ct. 242. Accordingly, at the time the Superior Court denied petitioner's request for a jury trial, the maximum authorized penalty for the charges against him was two years imprisonment and a $4,000 fine.

This Court has cited the maximum authorized penalty as the most relevant criterion for ascertaining whether an offense is petty for purposes of the right to trial by jury. *Frank v. United States,* 395 U.S. 147, 148, 23 L.Ed.2d 162, 165, 89 S.Ct. 1503 (1969). An authorized penalty of two years' imprisonment was held to require a jury trial in *Duncan v. Louisiana,* 391 U.S. 145, 159-160, 20 L.Ed.2d 491, 502, 88 S.Ct. 1444 (1968). It is worth noting that here, as in *Duncan v. Louisiana, supra,* the actual sentence imposed was sixty days in jail; here, however, petitioner was also ordered to pay a $2,500 fine.

The significance of the fine is that "the Fourteenth Amendment guarantees a right to trial by jury in all criminal cases that—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee," *Williams v. Florida,* 399 U.S. 78, 86, 26 L.Ed.2d 446, 452, 90 S.Ct. 1893 (1970). In the federal courts, an offense punishable with a fine of $1,000.00, as authorized by California Penal Code §11229, would not be considered a petty offense for purposes of the right to trial by jury, even leaving aside the fact that petitioner was charged with four offenses carrying a possible fine of $1,000.00. *U.S. v. R.L. Polk & Co.,* 438 F.2d 377 (6 Cir. 1971).

*U.S. v. R.L. Polk & Co.* was a recent federal case involving a contempt citation against a corporation with annual sales of approximately $50 million and net worth of approximately $20 million. Trial by jury was demanded by the defendant and denied by the

court. The District Court thereafter imposed a fine of $35,000.00. The Court of Appeals reduced the fine from $35,000.00 to $500.00, holding, upon authority of *Duncan v. Louisiana, supra,* "that a fine upon a corporation in excess of $500.00 no longer permits the underlying offense to be characterized as petty." *U.S. v. R.L. Polk & Co., supra,* 438 F.2d at 380. It is hardly necessary to suggest that if a fine in excess of $500.00 imposed upon a giant corporation is sufficiently serious to require a jury trial, a fine of $2500.00 imposed upon an individual defendant is at least equally serious.

This Court has not yet passed upon the applicability of *Baldwin v. New York, supra,* to cases wherein a defendant is charged with multiple counts, each of which is punishable by a maximum penalty of six months' imprisonment. Those State courts which have dealt with the problem have adopted the rule that where a jury trial is not granted upon multiple petty charges, the court in imposing sentence can impose no greater sentence than that which would be authorized for a single count. *State v. Koscot Interplanetary Inc.* (1972) 330 N.Y.S.2d 492; *State v. Owens* (1969) 54 N.J. 153, 254 A.2d 97. There is abundant authority for the proposition that the maximum penalties of multiple counts must be aggregated to determine whether or not a defendant is on trial for a petty or serious offense. *Chambers v. District of Columbia,* 90 U.S.App. D.C. 153, 194 F.2d 336 (D.C. Cir. 1952) (right to counsel); *James v. Headley,* 410 F.2d 325 (5 Cir. 1969).

To deny the right to trial by jury merely because a carefully drawn charge does not contain any one offense carrying more than six months' imprisonment would be to authorize prosecutors to seek extremely serious penalties against defendants without their being afforded fundamental Sixth Amendment protection. Petitioner was the victim of precisely such a process. It poses important questions of federal constitutional law, and warrants a hearing before this Court.

---

**AS TO QUESTION TWO**

**DO CALIFORNIA PENAL CODE SECTIONS 11225, 11226, 11227, 11228 AND 11229, AS INTERPRETED BY THE CALIFORNIA COURTS, AND AS APPLIED TO PETITIONER, CONSTITUTE A STATUTORY SCHEME FOR THE PRIOR RESTRAINT OF MATERIAL PRESUMPTIVELY PROTECTED BY FIRST AMENDMENT?**

**ARGUMENT**

In January of 1970 the People of the State of California obtained an injunction, pursuant to California Penal Code, which prohibited, *inter alia,* "motion pictures . . . simulating the exhibition of human genitalia," and sexual activity. As modified in September, 1971, the injunction continued to prohibit motion pictures simulating acts of sexual conduct. See Appendix D.

It is clear that the prohibitions contained in the injunction do not correspond to the constituent elements of obscenity. *Roth v. United States,* 354 U.S.

476, 489, 1 L.Ed.2d 1498, 1509, 77 S.Ct. 1304; *Memoirs v. Massachusetts,* 383 U.S. 413, 418, 16 L.Ed. 2d 1, 5, 86 S.Ct. 975 (1966). Since films which are not obscene are protected by the First Amendment, *Burstyn v. Wilson,* 343 U.S. 495, 502, 96 L.Ed. 1098, 1106, 72 S.Ct. 777 (1952), the effect of the injunction was to enjoin petitioner from showing films presumptively entitled to First Amendment protection. (It should be emphasized that the films which formed the basis for the contempt citation were not obscene; indeed, the trial court held that whether or not the films were obscene was immaterial. See Appendix D.)

By enjoining the dissemination of constitutionally protected matter in the future because of alleged violations in the past, California Penal Code Section 11225 et seq. constitute a prior restraint on free expression. *Near v. Minnesota,* 283 U.S. 697, 75 L.Ed. 1357, 51 S.Ct. 625 (1931); *Freedman v. Maryland,* 380 U.S. 51, 13 L.Ed.2d 649, 85 S.Ct. 734 (1965). The California statutes, with their reliance upon "public nuisance" grounds, are remarkably similar to the Minnesota statutes held unconstitutional in *Near v. Minnesota, supra.*

Petitioner was convicted because he exhibited certain films. These films were not obscene, and no evidence tending to prove that they might be obscene was ever introduced. The California statutes authorizing this outrageous result should be held unconstitutional.

## CONCLUSION

For the reasons hereinabove stated, it is respectfully submitted that this petition for Writ of Certiorari be granted.

Dated, San Jose, California,
September 1, 1972.

DONALD A. TENENBAUM,
*Attorney for Petitioner.*

**(Appendices Follow)**

## Appendix A

In the Superior Court of the State of California
in and for the County of San Mateo

No. 149826

The People of the State of California,
Plaintiff,

vs.

Philip Joseph Maita, August Vennemeyer,
Defendants.

[March 16, 1972]

### JUDGMENT OF CONTEMPT AND ORDER OF COMMITMENT

The People of the State of California to the Sheriff of the County of San Mateo, State of California, Greeting:

Whereas on January 27, 1970, a Temporary Injunction was duly and regularly granted and issued by the Honorable James T. O'Keefe, Judge of the above entitled Court, enjoining and restraining Philip Joseph Maita and August Vennemeyer, their agents and assignees, and each of them, from conducting, maintaining, using, occupying, permitting, causing or exhibiting acts of lewdness constituting a nui-

sance upon the premises of Easy Street, 2322 South El Camino Real, San Mateo, California, as more particularly described therein; and

Whereas, the said Temporary Injunction was, upon defendant of the parties as more particularly set forth in the Order Modifying Preliminary Injunction made and filed in the above action on September 14, 1971; and

Whereas, a true and correct copy of the Temporary Injunction was personally served upon Philip Joseph Maita by M. L. Greenfield, Inspector in the Office of the District Attorney, County of San Mateo, State of California, on January 29, 1970 and a true and correct copy of the Temporary Injunction was personally served upon August Vennemeyer by Inspector M. L. Greenfield on January 27, 1970; and

Whereas, on February 2, 1972, certified copies of Order to Show Cause Re Contempt issued by this Court on February 2, 1972, and Declaration of Charles G. De Mar in Support of Order to Show Cause Re Contempt, including Exhibit "A" Thereto, dated February 2, 1972, were personally served upon Philip Joseph Maita, Easy Street, 2322 South El Camino Real, San Mateo, California and personally served upon August Vennemeyer, 121 Entrada Court, San Francisco, California by Inspector M. L. Greenfield, commanding the said Philip Joseph Maita and August Vennemeyer, and each of them, to appear before the above entitled Court in Department 9 thereof on February 17, 1972, at the hour of 2 o'clock p.m. and then and there to show cause, if any

they may have, why they and each of them should not be adjudged guilty of contempt of court and punished accordingly for wilfully disobeying and violating the Temporary Injunction heretofore duly granted and issued on January 27, 1970, as modified by stipulated Order Modifying Preliminary Injunction, made and filed September 14, 1971, which Injunction and the violations thereof by said defendants, and each of them, are more particularly described in the Declaration of Charles G. De Mar in Support of Order to Show Cause Re Contempt filed herein; and

Whereas, at the time and place named in the said Order to Show Cause Re Contempt namely on February 17, 1972, and thereafter on February 18, 1972 and March 2, 1972 and March 3, 1972, in and before Department 9 and Department 1 of the Superior Court of the State of California, in and for the County of San Mateo, Plaintiff The People of the State of California and its counsel H. Kelly Ogle, Deputy District Attorney, San Mateo County, and defendant Philip Joseph Maita and his counsel Donald A. Tenenbaum, Esq., and defendant August Vennemeyer and his counsel James T. Davis, Esq., and each of them, did appear and proceedings were had on the disobedience and violations of said Injunction by defendants, and each of them, as alleged; and

Whereas, oral and documentary evidence having been introduced, all parties having rested and the matter submitted to the Court for decision, *The Court Finds:*

1) The Temporary Injunction dated January 27, 1970, as thereafter modified pursuant to stipulation of the parties set forth in the Order Modifying Preliminary Injunction dated September 14, 1971, was duly and regularly granted and made.

2) Defendant August Vennemeyer is one of the owners of the real property premises known as Easy Street, 2322 El Camino Real, San Mateo, California; is a proper party to these proceedings by reason of that fact, but has not knowingly or wilfully acted in disobedience or violation of said Injunction and is not in contempt thereof and as to defendant August Vennemeyer only the Order to Show Cause re Contempt is discharged.

3) Defendant Philip Joseph Maita has at all times since the granting of the Injunction, and the stipulated modification thereof, had and now has personal notice and actual knowledge of each, every and all of the terms thereof.

4) Defendant Philip Joseph Maita has at all times since the granting of the Injunction, and the stipulated modification thereof, had and now has the ability to comply therewith and confinement in the County Jail will in no way interfere with his ability to comply with the Injunction as modified.

5) On January 21, 1972, January 22, 1972, January 23, 1972 and January 24, 1972, and each of said dates, defendant Philip Joseph Maita at, in and about his place of business called Easy Street, 2322 South El Camino Real, City of San Mateo, County of San Mateo, State of California, deliberately, wilfully and

contemptuously disobeyed, violated and failed to comply with the Injunction and the stipulated modification thereof in the following particulars:

(a) *January 21, 1972:* Violated Paragraph 1 of the original Temporary Injunction by permitting, causing and exhibiting cocktail waitresses, the genitalia and anuses and pubic hair areas of which were not covered completely by material which could not be seen through by the nearest spectator. Violated subparagraph 2 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures simulating the exhibition of acts of sexual intercourse by, with and between human beings. Violated subparagraph 5 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating the exhibition of acts of rectal foreplay, kissing, touching, caressing, fondling or manipulation of male or female genitalia. Violated subparagraph 8 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating sexual activity where the genitals of the performers can then be seen. Violated subparagraph 9 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating the exhibition of male and female humans engaging in activities prohibited by subparagraphs 2, 4, 5, 6 and 8 of paragraph 2 of the modified Injunction by the use of drawings or inanimate objects, referring specifically to the motion picture entitled "Snow White and the Seven Dwarfs."

(b) *January 22, 1972:* Violated Paragraph 1 of the original Temporary Injunction by permitting, causing and exhibiting cocktail waitresses, the genitalia and anuses and pubic hair areas of which were not covered completely by material which could not be seen through by the nearest spectator. Violated subparagraph 2 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures simulating the exhibition of acts of sexual intercourse by, with and between human beings. Violated subparagraph 4 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures simulating the exhibition of acts of oral-genital copulation. Violated subparagraph 8 of Paragraph 2 of the modified Injunction by permitting, causing, and exhibiting motion pictures exhibiting or simulating sexual activity where the genitals of the performers can then be seen.

(c) *January 23, 1972:* Violated Paragraph 1 of the original Temporary Injunction by permitting, causing and exhibiting cocktail waitresses the genitalia and anuses and pubic hair areas of which were not covered completely by material which could not be seen through by the nearest spectator. Violated subparagraph 2 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures simulating the exhibition of acts of sexual intercourse by, with and between human beings. Violated subparagraph 4 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures simulating the exhibition of acts of

oral-genital copulation. Violated subparagraph 8 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating sexual activity where the genitals of the performers can then be seen.

(d) *January 24, 1972:* Violated Paragraph 1 of the original Temporary Injunction by permitting, causing and exhibiting cocktail waitresses, the genitalia and anuses and pubic hair areas of which were not covered completely by material which could not be seen through by the nearest spectator. Violated subparagraph 4 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures simulating the exhibition of acts of oral-genital copulation. Violated subparagraph 5 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating the exhibition of acts of rectal foreplay, kissing, touching, caressing, fondling or manipulation of male or female genitals. Violated subparagraph 6 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating the exhibition of female masturbation. Violated subparagraph 8 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating sexual activity where the genitals of the performers can then be seen. Violated subparagraph 9 of Paragraph 2 of the modified Injunction by permitting, causing and exhibiting motion pictures exhibiting or simulating the exhibition of male and female humans

engaging in activities prohibited by subparagraphs 2, 4, 5, 6, and 8 of Paragraph 2 of the modified Injunction by the use of drawings or inanimate objects, referring specifically to the motion picture entitled "Snow White and the Seven Dwarfs."

6) In failing to comply with the Injunction and the stipulated modification thereof as aforesaid, defendant Philip Joseph Maita acted deliberately, wilfully and contemptuously and for the purpose of increasing revenue at, in and about his place of business called Easy Street.

*It Is Therefore Ordered And Adjudged* that defendant Philip Joseph Maita is in contempt of court as aforesaid and that he be punished therefor by fine and imprisonment as follows:

(a) *January 21, 1972:* For deliberate, wilful and contemptuous disobedience, violations and failure to comply with the Injunction and stipulated modification thereof hereinbefore found to have occurred on January 21, 1972, defendant Philip Joseph Maita is sentenced to pay a fine in the sum of One Thousand Dollars ($1,000.00) without penalty assessment within ten (10) days, viz., no later than 5 o'clock p.m., March 13, 1972, and if the fine is not paid in full within that time defendant be incarcerated in the County Jail for One (1) Day for each Ten Dollars ($10.00) of the fine not paid and, further, that defendant Philip Joseph Maita be confined in the County Jail for the period of Six (6) Months except, however, four (4) months of that time or one hundred twenty (120) days is suspended upon condition that there be no further

violations by defendant Philip Joseph Maita of the Injunction herein.

(b) *January 22, 1972:* For deliberate, wilful and contemptuous disobedience, violations and failure to comply with the Injunction and stipulated modification thereof hereinbefore found to have occurred on January 22, 1972, defendant Philip Joseph Maita is sentenced to pay a fine in the sum of Five Hundred Dollars ($500.00) without penalty assessment within Ten (10) Days, viz., no later than 5 o'clock p.m., Monday, March 13, 1972, and if the fine is not paid in full within that time, defendant be incarcerated in the County Jail for One (1) Day for each Ten Dollars ($10.00) of the fine not paid and, further, that defendant Philip Joseph Maita be confined in the County Jail for the period of Sixty (60) Days, said confinement to run concurrently with the confinement imposed upon defendant for contempt occurring January 21, 1972.

(c) *January 23, 1972:* For deliberate, wilful and contemptuous disobedience, violations and failure to comply with the Injunction and stipulated modification thereof hereinbefore found to have occurred on January 23, 1972, defendant Philip Joseph Maita is sentenced to pay a fine in the sum of Five Hundred Dollars ($500.00) without penalty assessment within Ten (10) Days, viz., no later than 5 o'clock p.m. Monday, March 13, 1972, and if the fine is not paid in full within that time, defendant be incarcerated in the County Jail for One (1) Day for each Ten Dollars ($10.00) of the fine not paid and, further,

that defendant Philip Joseph Maita be confined in the County Jail for the period of Sixty (60) Days, said confinement to run concurrently with the confinement imposed upon defendant for contempts occurring January 21, 1972.

(d) *January 24, 1972:* For deliberate, wilful and contemptuous disobedience, violations and failure to comply with the Injunction and stipulated modification thereof hereinbefore found to have occurred on January 24, 1972, defendant Philip Joseph Maita is sentenced to pay a fine in the sum of Five Hundred Dollars ($500.00) without penalty assessment within Ten (10) Days, viz., no later than 5 o'clock p.m. Monday, March 13, 1972, and if the fine is not paid in full within Ten (10) Days, defendant be incarcerated in the County Jail for One (1) Day for each Ten Dollars ($10.00) of the fine not paid and, further, that defendant Philip Joseph Maita be confined in the County Jail for the period of Sixty (60) Days, said confinement to run concurrently with the confinement imposed upon defendant for contempts occurring January 21, 1972.

It Is Further Ordered that execution of the confinement imposed upon defendant Philip Joseph Maita hereinbefore provided be stayed until 5 o'clock p.m., Friday, March 10, 1972, solely to allow defendant Philip Joseph Maita time to file his proposed Petition for Writ of Certiorari before the Court of Appeal, First Appellate District, State of California. In the event defendant's Petition for Writ of Certiorari is not filed as aforesaid by that time, this stay shall

terminate and defendant shall be incarcerated in the County Jail as hereinbefore provided.

In the event defendant's Petition for Writ of Certiorari is filed as aforesaid within that time, this stay shall continue so long as proceedings continue in the Court of Appeal or until further order of this Court or the Court of Appeal, whichever order shall first occur.

It Is Further Ordered that defendant be admitted to bail in the sum of Five Thousand Dollars ($5,000) cash or surety upon the express conditions of the stay of his confinement to the County Jail hereinabove provided. This Stay Order shall not apply to defendant's payment of the Two Thousand Five Hundred Dollars ($2,500.00) fine ordered herein which shall be paid, in full, on or before 5 o'clock p.m. Monday, March 13, 1972. This Stay Order shall not be construed as affecting in any way the existing Injunction and the stipulated modification thereof.

Dated: This 16th day of March, 1972

Louis B. Dematteis

Judge of The Superior Court

## Appendix B

*In The Court of Appeal*
*State of California*
*First Appellate District*

DIVISION TWO

No. 31155

Philip Joseph Maita,
Petitioner,

vs.

Superior Court, County of San Mateo,
Respondent.

People of the State of California,
Real Party in Interest.

[May 19, 1972]

BY THE COURT:

The petition for a writ of certiorari is denied.

Filed May 19, 1972,
Clifford Porter, Clerk.

Dated May 19, 1972

Taylor, P.J.

*In the Court of Appeal*
*State of California*
*First Appellate District*

---

DIVISION TWO

---

Crim. No. 10552

---

In re Philip Joseph Maita
on Habeas Corpus,

vs.

[May 19, 1972]

BY THE COURT:

The petition for a writ of habeas corpus is denied.

Filed May 19, 1972,
Clifford C. Porter, Clerk.

Dated: May 19, 1972.

Taylor, P.J.

## Appendix C

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

June 15, 1972

DEAR SIR: I have this day filed Order
Hearing Denied

In re: 1 Civ. No. 31155
Maita
On
Superior Court, San Mateo
Respectfully,
G. E. Bishel
Clerk

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

June 15, 1972

DEAR SIR: I have this day filed Order
Hearing Denied

In re: 1 Crim. No. 10552
Maita
On
Habeas Corpus
Respectfully,
G. E. Bishel
Clerk

## Appendix D

With respect to petitioner's request for a jury trial, the Superior Court ruled, after argument by counsel, that "it seems to have established quite clearly, referring to the Schnackenberg case, that . . . a six months sentence is short enough to be petty. The entire discussion of the case indicates that a penalty up to six months is considered to be petty and that the defendant is not entitled to a trial on that issue by jury." (Reporter's Transcript, page 27)

When petitioner objected to the showing of the films which form the basis for the contempt adjudication, upon the ground that they were not obscene and hence were protected by the First Amendment (RT 115), the District Attorney replied:

"I think first and foremost the question of obscenity is not before the Court in this proceeding, which obviously is one of contempt for violating an injunction order of the Court. We are not concerned about whether or not the films are obscene or pornographic. The question before the Court is: Do they violate this injunction? . . . I would simply repeat: It is not the obscenity we are concerned with today . . ." (RT 116) Petitioner's motion was thereupon denied (RT 117).

It was never contended by the District Attorney, nor was it in fact the case, that the films in question here had ever been held to be obscene by the San Mateo County Superior Court.

In The Superior Court Of The State Of California,
In And For The County Of San Mateo

No. 149826

The People of the State of California,
*Plaintiff*,

vs.

Philip Joseph Maita and August Vennemeyer,
*Defendants.*

[Jan. 27, 1970]

## TEMPORARY INJUNCTION PURSUANT TO SECTION 11227 OF THE PENAL CODE OF CALIFORNIA.

Upon the complaint of Keith C. Sorenson, District Attorney of the County of San Mateo, together with the accompanying affidavits and exhibits thereto, and

Having heard and considered the answer of the defendants and all exhibits introduced thereby, and

Having read and considered the brief and memoranda of points and authorities submitted by the parties herein;

IT IS THE JUDGMENT OF THIS COURT that the grounds and premises and the building located

thereon as described in the complaint herein constitute a nuisance as defined in the brief 11225 of the Penal Code of California by virtue of acts of lewdness there held and occurring.

IT IS ORDERED AND ADJUDGED that the grounds and premises and the building located thereon as described in the court case herein be and the same hereby are, until further order of Court and during the pendency of this action, enjoined as a place to conduct, maintain or continue the acts of lewdness constituting a nuisance complained of in this action by the defendants, or any one of them, or by any other person or persons.

IT IS FURTHER ORDERED AND ADJUDGED that the defendants, Philip Joseph Maita and August Vennemeyer, and their agents and assignees, be and each of them hereby is, until further order of this Court and during the pendency of this action, enjoined and restrained from conducting, maintaining, using, occupying or in any way permitting the use or occupancy of said premises and the buildings located thereon, to-wit: Easy Street Bar, 2322 South El Camino Real, San Mateo, California, for the purpose of lewdness or as a disorderly house as defined in Section 11225 of the Penal Code of California, and more particularly the defendants, Philip Joseph Maita and August Vennemeyer, and their agents and assignees, and each of them, are enjoined and restrained from conducting, maintaining, using, occupying, permitting, causing or exhibiting:

1] Cocktail waitresses the genitalia and anuses of which and the pubic hair areas of which are not covered completely by material which cannot be seen through by the nearest spectator;

2] Dancers and live performers exhibiting genitalia and anuses and pubic hair areas which are not completely covered by material which cannot be seen through by the nearest spectator;

3] Motion pictures or live performances exhibiting or simulating the exhibition of human genitalia and anuses and pubic hair areas which are not completely covered by material which cannot be seen through by the nearest spectator;

4] Motion pictures or live performances exhibiting or simulating the exhibition of acts of sexual intercourse by, with or between human beings;

5] Motion pictures or live performances exhibiting or simulating the exhibition of acts of oral genital copulation;

6] Motion pictures or live performances exhibiting or simulating the exhibition of acts of oral-breast copulation;

7] Motion pictures or live performances exhibiting or simulating the exhibition of male or female masturbation;

8] Motion pictures or live performances exhibiting or simulating the exhibition of female humans engaging in auto eroticisms by the use of any inanimate object.

IT IS FURTHER ORDERED that the defendants herein are given seven (7) days following service of this injunction to answer the complaint for abatement.

Dated: January 27, 1970.

/s/ James T. O'Keefe,
James T. O'Keefe,
Judge of the Court.

Keith C. Sorenson,
District Attorney
By: Kelly Ogle, Deputy,
Hall of Justice and Records,
Redwood City, Ca. 94063.
369-1441; Ext. 2783.
Attorneys for County of San Mateo.

In The Superior Court Of The State Of California,
In And For The County Of San Mateo

---

No. 149826

---

The People of the State of California,
*Plaintiff*,

vs.

Philip Joseph Maita and August Vennemeyer,
*Defendants.*

[Jan. 27, 1970]

## ORDER MODIFYING PRELIMINARY INJUNCTION

---

Whereas, defendant Philip Joseph Maita by and through his counsel, Donald A. Tenenbaum, Esq., has heretofore filed his Notice of Motion for Modification of Preliminary Injunction, said Notice being dated July 21, 1971; and

Whereas, there is presently in effect in the above-captioned matter a Preliminary Injunction made and ordered by the Honorable James T. O'Keefe, dated and filed January 27, 1970; and

Whereas, pursuant to stipulation of counsel for both parties and order of this Court, the matter of defendant's motion has come on regularly to be heard this 14th day of September, 1971, counsel appearing for both parties; and

Whereas, pursuant to stipulation of counsel for both parties, the within form of Order Modifying Preliminary Injunction is presented to the Court for hearing and consideration; and

The Court having heard and considered arguments of counsel for both parties; the stipulation of counsel for both parties, and the pleadings and records of these proceedings, IT IS ORDERED that pursuant to stipulation of counsel for both parties and good cause appearing therefor, the Preliminary Injunction dated January 27, 1970, presently in effect in these proceedings be, and hereby is, modified as follows:

1. Paragraphs numbered 2] and 3] thereof, page 2, lines 23 through 29, inclusive, are deleted in their entirety;

2. Paragraphs numbered 4] through 8], pages 2 and 3, are amended, modified, renumbered, and supplemented as follows:

2] Motion pictures or live performances exhibiting or simulating the exhibition of acts of

sexual intercourse by, with or between human beings;

3] Motion pictures or live performances exhibiting or simulating the exhibition of acts of sexual intercourse by, with or between human beings and animals (beastiality);

4] Motion pictures or live performances exhibiting or simulating the exhibition of acts of oral-genital copulation;

5] Motion pictures or live performances exhibiting or simulating the exhibition of acts of rectal foreplay, kissing, touching, caressing, fondling or manipulation of male or female genitalia.

6] Motion pictures or live performances exhibiting or simulating the exhibition of male or female masturbation;

7] Motion pictures or live performances exhibiting or simulating the exhibition of sodomy or flagellation;

8] Motion pictures or life performances exhibiting or simulating sexual activity where the genitals of the performers can then be seen;

8] Motion pictures or live performances exhibiting or simulating the exhibition of male or female *humans* engaging in auto-eroticisms or any of the prohibited activities hereinabove described by the use of any drawing, artificial device or inanimate object.

3. Except as hereinabove specifically provided, the Preliminary Injunction presently in effect in these proceedings dated January 27, 1970, is and shall continue to be in full force and effect and shall here-

after be considered and construed with this Order Modifying Preliminary Injunction as one instrument enjoining and constraining defendants as provided herein.

Dated: September 14, 1971.

/s/ J. A. Branson,
Judge of the Superior Court.